



## DEPARTMENT OF TRANSPORTATION

[4910-22-P]

### Federal Highway Administration

#### Buy America Waiver Notification

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic 1) Electrical Controls and Electrical Equipment; 2) Main Drive Electrical Motor; 3) Auxiliary Drive Electric Motor; 4) Span Lock Electric Motor & Controls for a specific project in the State of Washington.

**DATES:** The effective date of the waiver is [insert date one day after publication in Federal Register].

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366-1562, or via e-mail at [gerald.yakowenko@dot.gov](mailto:gerald.yakowenko@dot.gov). For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366-4928, or via e-mail at [michael.harkins@dot.gov](mailto:michael.harkins@dot.gov). Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

## **Background**

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use 1) Electrical Controls and Electrical Equipment; 2) Main Drive Electrical Motor; 3) Auxiliary Drive Electric Motor; 4) Span Lock Electric Motor & Controls for a specific project in the State of Washington.

In accordance with Division A, section 122 of the "Consolidated and Further Continuing Appropriations Act, 2012" (Pub. L. 112-55), the FHWA published a notice of intent to issue a waiver on its Web site for 1) Electrical Controls and Electrical Equipment; 2) Main Drive Electrical Motor; 3) Auxiliary Drive Electric Motor; 4) Span Lock Electric Motor & Controls for a specific project in the State of Washington (<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=76>) on May 22nd. The FHWA received three comments in response to the publication. The first commenter (Donald Pearsal) stated that "if" there are manufacturers of this equipment in the United States, we should use it. The FHWA agrees with this comment. Unfortunately, however, the FHWA has been unable to locate a manufacturer who is able to produce these products in compliance with the FHWA Buy America requirements. The second commenter (Muhamad A. Naboulsi) opposed the waiver saying that "we have this type of

technology,” but he did not provide information regarding which domestic manufacturer may produce these products in compliance with the FHWA’s Buy America requirements. The third commenter (Rich) supports the waiver if the American product is more than 50 percent over non-domestic product. However, this is not the standard for the application of Buy America. Under Buy America, all steel and iron of predominantly steel or iron products must be manufactured in the United States.

During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers of 1) Electrical Controls and Electrical Equipment; 2) Main Drive Electrical Motor; 3) Auxiliary Drive Electric Motor; 4) Span Lock Electric Motor & Controls. Based on all the information available to the agency, including the consideration of the comments, the FHWA concludes that there are no manufacturers of 1) Electrical Controls and Electrical Equipment; 2) Main Drive Electrical Motor; 3) Auxiliary Drive Electric Motor; 4) Span Lock Electric Motor & Controls for the project in the State of Washington that produce the products in compliance with the FHWA’s Buy America requirements.

Therefore, in accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA’s Web site via the link provided to the Washington State waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110-161, 23 CFR 635.410)

Issued on: February 13, 2013

Victor M. Mendez  
Federal Highway Administrator

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